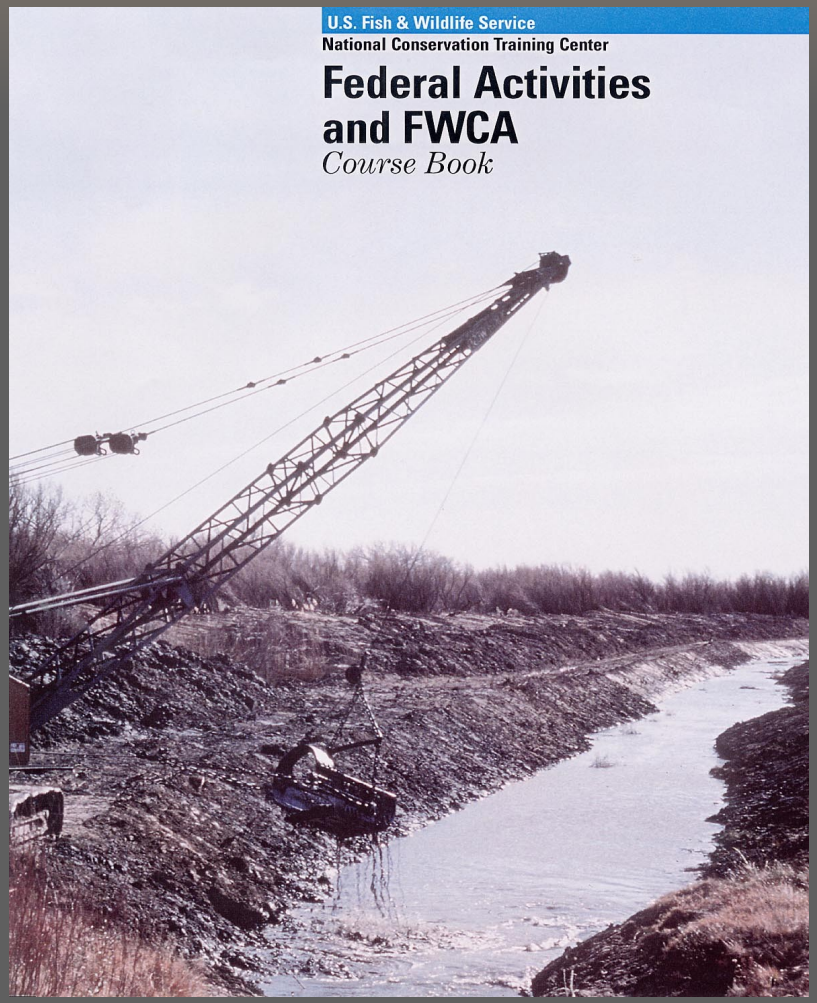
Fish and Wildlife Coordination Act (FWCA)

Protecting and Conserving Fish and Wildlife Resources
Ch. 4 Mod. 1 – HO#10

FWCA Training Course



FWS National Conservation Training Center, Shepherdstown, West Virginia

ECS3132

For Course Information:
http://training.fws.gov/

Resources

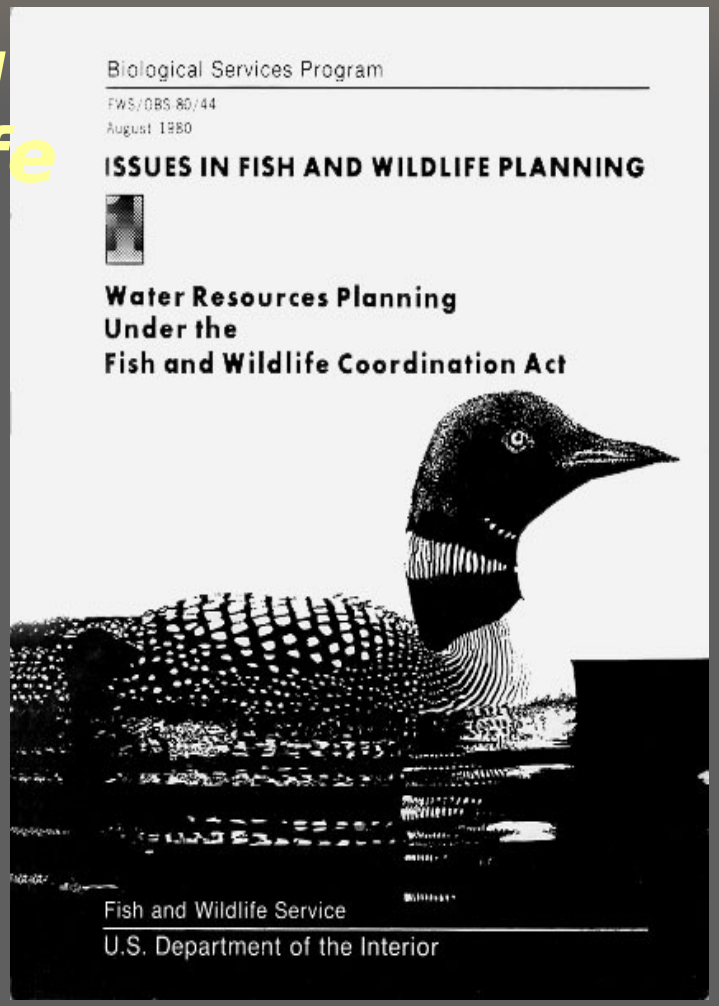
Water Resources Planning Under the Fish and Wildlife Coordination Act (1980) –

(www.fws.gov/r9dhcbfa/stutzman.pdf)

FWCA text

Updated (2011) –

http://www.fws.gov/habitatconservation/fwca.html



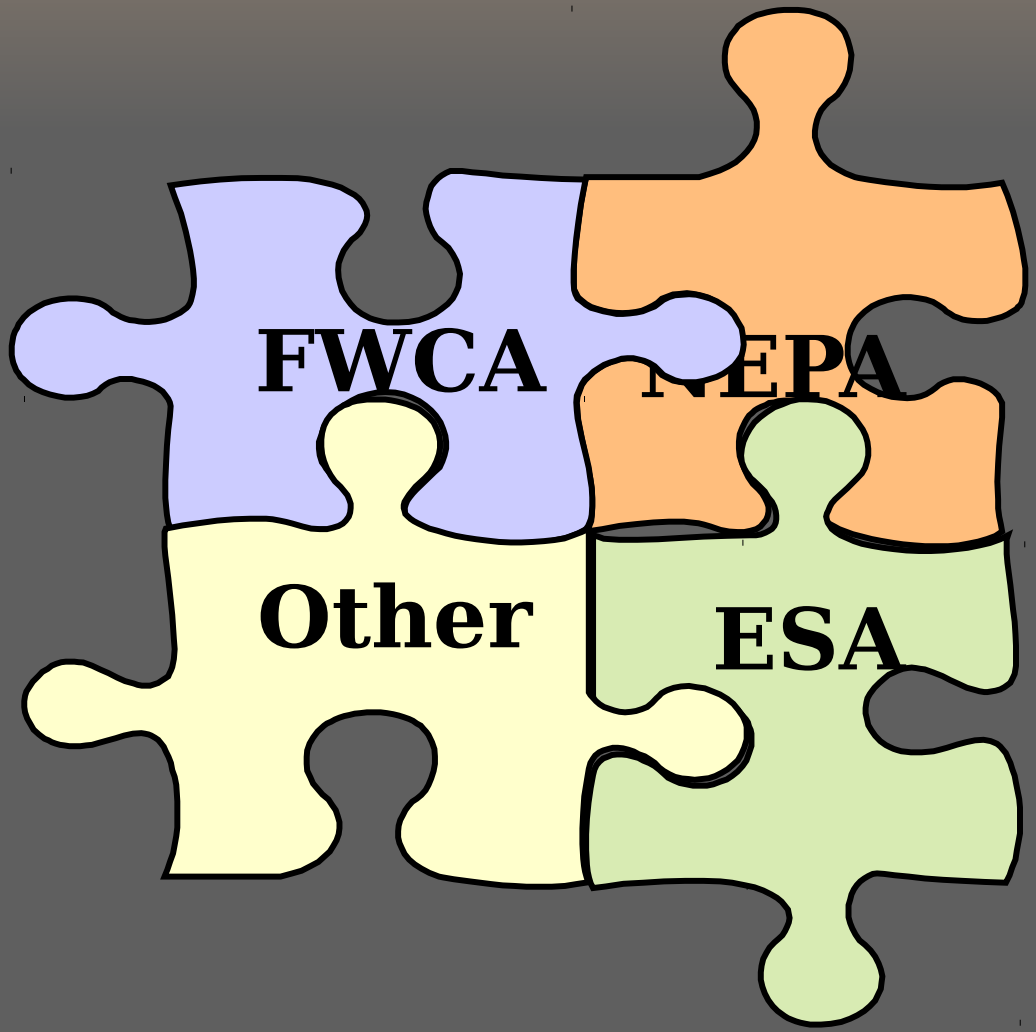
Introduction

One of the major authorities for evaluation of fish and wildlife issues associated with water resource projects.

P.L. 85-624, 1958 Pre-dates NEPA and Endangered Species Act

(NEPA was initially proposed as FWCA amendment)

Introduction



Need

Fish and Wildlife Coordination Act

Legislative History

Act of 1934 - Promote the Conservation of Wildlife Fish and Game, and for other Purposes

- **Authorized the Secretaries of Agriculture and Commerce to provide assistance to Federal and State agencies to protect, rear, stock, and increase the supply of game and fur-bearing animals**
- **Study the effects of domestic sewage, trade wastes, and other polluting substances on wildlife.**
- **Directed the Bureau of Fisheries to use impounded waters for fish-culture stations and migratory-bird resting and nesting areas**
- **Required consultation with the Bureau of Fisheries prior to the construction of any new dams to provide for fish migration.**

Legislative History (cont.)

P.L. 85-624, Fish and Wildlife Coordination Act 1958 Amendments

Basic problems Congress wanted to address:

- Promote economic development and maintain a viable and thriving economy
- Insure maintenance or restoration of productive habitats and environmental quality

Legislative History (cont.)

Senate report No. 1981 on the 1958 amendments

"The fish and wildlife resources of the nation are tremendously important, not only to the physical and spiritual well-being of our people, but to our national economy as well... Commercial fisheries are of

Legislative History (cont.)

1958 Amendments:

- Gave the Act its current name.
- Authorized fish and wildlife to be a project purpose.
- Allows land acquisition and use of project lands and waters for fish and wildlife conservation.
- Provided for transfer of funds to the FWS.

Purposes

**ecognize the vital importance
llife resources in relation to wa
ource development programs ir
ted States.**

2. "…wildlife conservation shall receive **equal consideration** and be coordinated with other features of water resource development programs…"

Definition of *"Wildlife"* and *"Wildlife Resources"*

"...include birds, fishes, mammals, and other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent."

Act Provisions

- Fish and Wildlife conservation receives <u>equal</u> consideration with other projects features (co-equal objective of projects!)

- <u>Mandatory</u> consultation with wildlife agencies

- Full consideratio
  agency
  recommendations

- Actions agencies may include recommended means and measures they find to be justified

Coordination
Section 2 (a)

- **Applies to proposals to modify a water body for any purpose**
- **Requires that agencies shall consult with the FWS and State wildlife agency regarding impacts to fish and wildlife.**
- **Applies to projects constructed, permitted, or licensed by a Federal agency**

When Does Coordination Occur

- **Requires early coordination with federal and state resource agencies to insure true integration of fish and wildlife opportunities, problems, and potential measures.**
- **Coordinate study problem opportunities so FWS can participate on PDT and in alternative formulation.**
- **Initiate during Recon phas but generally no funding transfer until Feasibility a through project construction.**

Exemptions to the FWCA

- **Federal impoundments less than 10 surface acres.**
- **Activities primarily for land management programs by federal agencies (FS, NPS, BLM).**
- **Federal loan, grant and technical assistance actions that do not require a federal permit or license to modify water**

Funding
Section 2(e)

- **Federal construction agencies authorized to transfer funds to FWS from investigation, engineering, or construction appropriations.**

Funds to be used for all or part of investigations required to carry out the coordination and reporting requirements of Section 2 of the FWCA.

Transfer Funding Agreement

- Funds for FWS work are to be included in Corps budget.
- Detailed Scopes of Work for FWS work.
- Corps to keep FWS informed on studies, projects and funding for FWS involvement.
- Funds are NOT transferred for ESA or NEPA activities.
- New MOA Signed 22 Jan 2003.

Transfer Funding Agreement (cont.)

- Corps consults first with FWS for fish and wildlife information.
  - If mutually agreeable may be contracted.
  - Both parties work together to select the contractor!
  - Product of good relationships.
- Close formal and informal coordination.

FWCA Reports

- **Planning Aid Letter (PAL) or Planning Aid Report (PAR)**
  - **Not required, but can be provided at any time to document FWS input.**
- **2(b) Report (Fish and Wildlife Coordination Act Report – FWCAR)**
  - **Draft 2 (b) report normally included in Draft Feasibility/NEPA document. Final 2 (b) report in Final Feasibility/NEPA document.**

FWCA Reports (cont.)

- **PAL/PAR can document:**
  - **Fish and Wildlife problems and opportunities.**
  - **Concurrence or recommendations regarding assessment methodologies.**
  - **Description of existing fish and wildlife resources (helpful for EA preparation).**
  - **Initial evaluation of study alternatives.**
  - **Does not constitute the final report of the DOI as required by Section 2(b) of the Act.**

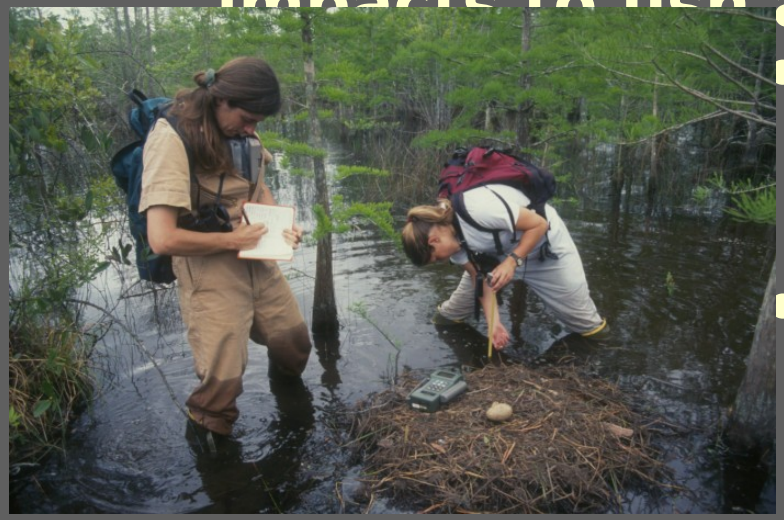
FWCA Reports (cont.)

- **Section 2(b) Report**
  - **Formal report pursuant to Section 2(b) of FWCA.**
  - **Description of fish and wildlife resources.**
  - **Future with and without project.**
  - **Impacts of alternative plans.**
  - **Recommendations for mitigation and development of fish and wildlife resources**
  - **Position of FWS (pro or con).**

FWCA Recommendations

FWCA Reports Based on surveys and investigations conducted by FWS and State to:

- **Determine possible impacts to fish and**



- **Determine mitigation measures that should be adopted**
- **Provide recommendations for restoration or improvement of wildlife resources**

Consideration

- **<u>Full</u> consideration is to be given to recommendations of FWS/NMFS and State.**
- **Reporting agency shall include justifiable means and measures for wildlife that should be adopted to obtain maximum overall project benefits.**
- **No requirement that consulting federal agency must follow the advice of State or FWS (Corps decision), but must have a written response in the planning**

Consideration (cont.)

- **Corp's Responsibilities:**
  - **In addition to including the 2(b) report in documents going to Congress, you must respond in writing to the recommendations of the Service.**

Reporting
Section 2(b)

- **Fish and Wildlife Coordination Act Reports**
  - **Integral part of reports to higher authority:**
    - **Division/Headquarters**
    - **Congress**
    - **Agency/person**
      - **Authorizing construction**
      - **Approving modification or**

Summary

- **Provides opportunity for active FWS participation in water resource planning.**
- **Fish and Wildlife issues become part of decision-making/public interest review process. The project planning process is to insure true integration of fish and wildlife issues, opportunities, problems, and features.**
- **Complements NEPA and other environmental laws and places fish & wildlife issues in public review process.**
- **Procedural and advisory law.**

vs.

How Might the Coordination Process Work?

POLARIZED: WHY?

- History
  - Old Feuds / adversarial relationship
- Resource Focus (blinders)
  - Mission recognition and differences
- Trust
  - "No Service buy in"
- Customers and Stakeholders
  - Understanding the cost of doing business

PRE - NEPA

“Thank you for your comments. We will take care of the problem.”

i.e. No Service Involvement

POST – NEPA (e.g. 1970s)

"We plan the project… you plan the mitigation."

- Peripheral Service Involvement
- Significant Communication Problems

Environmental Awareness (1980s)

"Avoid and Minimize"

- Service is interactive
- Communication still a major issue

FEDERAL PROJECTS (1990s to today)

Large number of Restoration Projects as Corps gets restoration mission.

- **Seek Service support / partnership**
- **Still need to improve communication**

CORPS/FWS ISSUE OLD RESOLUTION

Preferred Process

Project Management Business Process (PMBP) / Collaborative Planning

Keys to Success

- **How to best negotiate to ensure equal consideration of fish and wildlife?**
  - **Involve resource agencies as EARLY as possible**
  - **Provide timely and adequate project information**
  - **FWS / State DNR part and equal planning t**
  - **Maintain coordinatio as often as needed**
  - **Follow the provisions of the FWCA, Corps guidance, and the National Transfer**

Fish and Wildlife Coordination Act

And finally…the key to successful projects lies in developing effective partnerships

tributary
Port of Whoville
Whoville River
1 mile to Atlantic Ocean
New York Ave
Christiana Ave
Terminal Ave
Terminal Ave
Terminal Ave
Golding Ave
Pyles Ln
Pigeon Point Rd
Dock View Dr
Harbor View Dr
Lambsons Ln
Simonds Gardens Park
Hamilton Park
600 yds
Image courtesy of USGS